IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 922 of 2003
WITH
CIVIL APPLICATION No 3149 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARJAN CO-OP HOUSING SOCIETY

Versus

HIMMATLAL SUBHAGCHANDRA SHAH SINCE DECD. THRO' HEIRS

Appearance:

1. First Appeal No. 922 of 2003

MR KV SHELAT for Appellant No. 1

..... for Respondent No. 1

MR RAJESH K SAVJANI for Respondent No. 1/1,1/2,1/3

MR DIPAK R DAVE for Respondent No. 1/2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2003

COMMON ORAL JUDGEMENT

In this First Appeal, this Court (Coram : M.H.

Kadri, J.) issued notice for final disposal vide order dtd.5/5/2003 making it returnable on 9/7/2003. Thereafter, R & P has been called for by this Court (Coram : M.H. Kadri,J.) vide order dtd.30/9/2003, pursuant to which same is also received. Mr.KV Shelat has produced Paper Book also. Mr.RK Savjani, learned counsel appeared on behalf of respondents.

2. Heard the learned counsel for the respective parties.

3. ADMIT. Learned counsel for the respective parties waive service of notice of admission. At the request of learned counsel appearing for the parties, the matter is taken up for hearing and finally disposed of.

4. Today, I have heard learned counsel for the respective parties. They have drawn my attention to the order passed by the learned Civil Judge (SD), Gandhinagar below application Ex.47, submitted by the legal heirs and representatives of the defendants on 13/11/2002. The learned Civil Judge, dismissed the suit on 11/2/2002 on preliminary point without framing issue, against which the First Appeal has been preferred.

5. It is not in dispute that the suit has been filed by the plaintiff for specific performance of the contract mainly on the basis of alleged Agreement-for-Sale dtd.15/7/1980 and alleged confirmation dtd.18/3/1999. The learned Civil Judge dismissed the suit without giving any opportunity of hearing to the party concerned.

6. In view of the above, learned counsel for the respective parties have requested this court to direct the trial court to decide the suit on merits after giving opportunity of hearing to the concerned parties, as the suit has been dismissed on the basis of application Ex.47, on the preliminary point without framing issue and without deciding the suit on merits.

7. Having heard the learned counsel for the respective parties and considering the facts and circumstances of the case, the First Appeal is allowed. The order dtd.13/12/2002 passed by the Civil Judge (SD), Gandhinagar below application Ex.47 is hereby quashed and set aside. The suit is ordfered to be restored to file. The Civil Judge (SD), Gandhinagar is directed to decide Special Civil Suit No.21 of 2002 on merits, after giving opportunity to the party concerned for production of documents, after framing issue and recording evidence, in accordance with law, including the contentions raised in

application Ex.47 as afresh.

8. Learned counsel for the respective parties have given assurance to this court that their clients will give full cooperation to the trial court for early disposal of the suit and they will also inform their counter part appearing on behalf of their respective parties before the trial court.

9. In view of the disposal of main First Appeal, Civil Application NO.3149 of 2003 does not survive and same stands disposed of accordingly. Rule is discharged.

Office to send back R & P forthwith.

(R.P.DHOLAKIA,J.)

RAFIK